

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES

Appellant: Frank D Husson, Jr.
Title: SOLAR WATER HEATER AND
PASTEURIZER
Appl. No.: 10/039,277
Filing Date: 1/4/2002
Examiner: Carl D. Price
Art Unit: 3749
Confirmation Number: 1245

REPLY BRIEF ON APPEAL

Mail Stop Appeal Brief - Patents
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Sir:

Under the provisions of 37 C.F.R § 41.39, this Reply Brief is submitted in response to the Examiner's Answer (the "Answer"), dated August 27, 2007.

I. Introduction

Pursuant to the right under 37 C.F.R § 41.39, Appellant takes this opportunity to respond to certain comments set forth in the Examiner's Answer.

II. Argument

Several points raised in the recently issued Examiner's Answer bear further comment.

The Examiner's arguments allegedly in "response to appellant's arguments against the references individually" (Examiner's Answer, Page 9, second paragraph) are respectfully submitted as being misplaced. To the contrary, rather than attacking each reference individually, Appellant has clearly noted that the Examiner has failed to establish a *prima facie* case of obviousness since none of the analogous references cited teach or suggest a pasteurizer able to achieve water temperatures of at least 60°C. Appellant's arguments demonstrate that neither the primary reference GB 1 517 449 (hereinafter "the '449 Patent") nor any of the secondary references (SODIS, Burkhardt or Brewer) teach or suggest this feature.

Next, the Examiner now alleges, for the first time, that the '449 Patent is relevant for disclosure of this feature. Specifically, the Examiner argues that the disclosure of the '449 Patent:

is merely representative of the capabilities of the solar energy collector of GB 1 517 449. Nothing in the disclosure of GB 1 517 449 suggests the solar energy collector of the type disclosed therein is not capable of, even without additional foam insulation, of [sic] achieving temperatures in the operating range set forth in appellant's claims.

See Examiner's Answer, Page 9, third paragraph. In effect, rather than alleging that the '449 Patent discloses the relevant feature of the present invention, the Examiner argues that it does not disclose that the feature could not be included in the disclosure of the '449 Patent.

"A *prima facie* case of obviousness is established when the teachings from the prior art itself would appear to have suggested the claimed subject matter to a person of ordinary skill in the art." *In re Rijckaert*, 9 F.3d 1531, 1532, (Fed. Cir. 1993) (emphasis added). There is no teaching of the relevant feature of the present invention in the '449 Patent, as correctly acknowledged by the Examiner in earlier papers.

With reference to the SODIS reference, the Examiner states that “contrary to applicant’s remarks in the Brief, the operating parameters of the temperature indicator (WAPI) are not related to the ‘at least 60°C’.” The Examiner grossly misstates and misrepresents Appellant’s invention. As stated clearly in the main brief, Appellant notes that the SODIS disclosure includes a reusable temperature indicator which indicates whether a temperature of 50°C has been obtained. Since this temperature is inadequate for pasteurization, SODIS fails to teach or suggest a pasteurizer able to achieve water temperatures of at least 60°C. There is no disclosure in SODIS related to a pasteurizer able to achieve water temperatures of at least 60°C.

Further, Appellant notes that the disclosure of SODIS relates to inactivation of pathogens in water by using ultraviolet rays. By contrast, the present invention pasteurizes the water by achieving a temperature of at least 60°C. In this regard, SODIS relates to a completely different manner of treating water, one that does not depend upon or require achieving water temperatures of at least 60°C.

With reference to Ryder, as noted in Appellant’s main brief, Ryder constitutes nonanalogous art as it relates to contact lens holders, while the present invention relates to solar water pasteurizers. Ryder not only does not relate to pasteurization of water, but also relies on external heating device such as an autoclave or boiler. The Examiner responds by arguing that the use of an autoclave or a boiler is analogous to use of solar energy. Appellant submits that it is unreasonable to suggest that a contact lens holder using an artificial source of heat, such as an autoclave or boiler, is reasonably pertinent to a simple, portable system for the pasteurization of water using solar energy.

The Examiner argues that “Appellant’s brief presents no arguments directed to the examiner’s rejection of claims 10, 14, 15 and 44” Appellant notes that claims 10, 14, 15 and 44 depend, either directly or indirectly, from one of either claim 1 or claim 43. Claims 10, 14, 15 and 44 are patentable for at least their dependency on patentable claims 1 and 43.

With regard to evidence of secondary considerations exhibiting nonobviousness, the Examiner argues that the submission fails to establish the long-felt need. Contrary to the Examiner’s assertion that the claimed invention “has not solved any long felt need,” Appellant

notes that the declaration includes evidence of satisfaction by users of the device (see Exhibit B of the Declaration relating to Project Concern International, Exhibits F.1 to F.16 relating to communications with individuals in various underdeveloped regions). Such evidence clearly demonstrates the long-felt need and the present invention's success in addressing such long-felt need.

Finally, while Appellant agrees with the Examiner's assertion that "reliance on a large number of references in a rejection does not, without more, weigh against the obviousness of the claimed invention," Appellant asserts that, in the present case, the numerous references applied by the Examiner are so disparate and unrelated as to make an obviousness rejection unreasonable. Indeed, without the benefit of hindsight, it would be virtually impossible to combine the cited references so as to result in the claimed invention. In particular, the lack of any suggestion or motivation to combine selected elements of the numerous disparate references makes such a result unlikely.

Accordingly, reconsideration and reversal of the rejection of the claims is once again respectfully requested.

Respectfully submitted,

Date: October 29, 2007

FOLEY & LARDNER LLP
Customer Number: 30542
Telephone: (858) 847-6711
Facsimile: (858) 792-6773

By  _____

Stephen E. Reiter
Attorney for Appellant
Registration No. 31,192